

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

<b>ALBERT D. JAMES</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	
<b>vs.</b>	)	<b>Case No. 09-1155-M</b>
	)	
<b>OKLAHOMA COUNTY,</b>	)	
	)	
<b>Respondent.</b>	)	

**REPORT AND RECOMMENDATION**

Petitioner, a state prisoner appearing *pro se*, has filed a motion for leave to proceed *in forma pauperis* and supporting affidavit. Pursuant to an order entered by Chief United States District Judge Vicki Miles-LaGrange, this matter has been referred to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B). Having reviewed said motion, the undersigned finds that Petitioner has sufficient funds to prepay the filing fee of \$5. Because he does not qualify for authorization to proceed without prepayment of the filing fee, it is recommended that Petitioner's motion [Doc. No. 2] be denied and that he be ordered to prepay the full \$5 filing fee for this action to proceed. 28 U.S.C. § 1915(a)(1). See Lister v. Department of the Treasury, 408 F.3d 1309, 1312 (10th Cir. 2005) (magistrate judge should have issued a report and recommendation, recommending denial of the motion to proceed *in forma pauperis*.).

It is further recommended that unless Petitioner pays the \$5 filing fee in full to the Clerk of the Court on or before the 11<sup>th</sup> day of November, 2009, this action be dismissed without prejudice to refiling. Petitioner is advised that failure to timely object to this Report

and Recommendation waives the right to appellate review of both factual and legal issues contained herein. Moore v. United States, 950 F. 2d 656 (10th Cir. 1991). The Clerk is hereby ordered not to forward a copy of the petition to the appropriate state agency until further order of the Court.

ENTERED this 22<sup>nd</sup> day of October, 2009.

  

---

DOYLE W. ARGO  
UNITED STATES MAGISTRATE JUDGE